# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES

LANPHERE ENTERPRISES OF WASHINGTON INC. d/b/a RENTON HONDA/KIA Employer and

MICHAEL S. MONROE, an Individual Petitioner

Case No. 19-RD-3790

and

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE 160, AFL-CIO Union

John H. Fawley, Atty., Counsel for the Regional Director, Region 19, Seattle, Washington. Michael Scott Monroe, an individual, Tacoma, Washington, for the Petitioner. Terry C. Jensen, Atty., Robblee, Brennan & Detwiler, Seattle, Washington, for the Union. Ryan P. Hammond, Atty., Littler Mendelson, Seattle, Washington, for the Employer.

# ADMINISTRATIVE LAW JUDGE RECOMMENDED DECISION ON OBJECTIONS TO ELECTION

Lana H. Parke, Administrative Law Judge. On April 23, 2008<sup>1</sup> Michael S. Monroe (Mr. Monroe), an individual, filed with Region 19 of the National Labor Relations Board (the Board) a petition in Case 19-RD-3790 (the 2008 Decertification Petition).<sup>2</sup> On May 22 pursuant to a Stipulated Election Agreement approved on May 2, Region 19 conducted an election by secret ballot in Renton, Washington in the appropriate unit described below. On May 29, the Employer timely filed the Employer's Objections to the Conduct of the Election and to Conduct Affecting the Results of the Election, on which objections I held a hearing on July 17 in Seattle, Washington.<sup>3</sup>

<sup>&</sup>lt;sup>1</sup> All dates refer to 2008 unless otherwise stated.

<sup>&</sup>lt;sup>2</sup> Where not otherwise noted, the findings herein are based on the formal documents, the stipulations of counsel, and/or unchallenged credible evidence.

<sup>&</sup>lt;sup>3</sup> Prior to the hearing, both the Union and the Employer asked the Regional Director to make Daniel Apoloni, the Board Agent who conducted the election, available to testify. The Regional Director denied the requests, stating that the parties could renew their requests at the hearing. No party at the hearing requested the testimony of the Board Agent.

### I. Bargaining History

The Employer operates dealerships/service centers at 200 S.W. Grady Way (the Honda facility) and 900 S. Grady Way (the Kia facility), Renton, Washington.<sup>4</sup> In 2005 the Board certified the Union as the collective-bargaining representative of the Employer's employees in the following unit (the Unit):

All full-time and regular part-time service and lube technicians employed by the Employer at its Renton Honda/Kia dealerships/service centers located at 200 S.W. Grady Way and 900 S. Grady Way, Renton, Washington.

Thereafter, the parties entered into negotiations for a collective-bargaining agreement. In 2006, the Board conducted an unsuccessful decertification election. In 2007, the parties reached agreement on the terms of a collective-bargaining contract, effective April 1, 2007 through June 30.

#### II. The Decertification Election and the Employer's Objections

Pursuant to the 2008 Decertification Petition, Region 19 scheduled an election for May 22 among the Employer's unit employees. Unlike the prior two elections, in which the sole polling area was at the Honda facility, the 2008 Decertification Election was to be held at two polling locations: the Honda facility and the Kia facility. Approximately a week prior to May 22, the Employer posted official Board-provided Notices of Election at the Honda and Kia facilities. No specific evidence was adduced regarding election notices at the Honda Facility. The Notice of Election at the KIA facility was posted in the service/repair area where unit employees worked, at the door leading into the lobby area. Kia facility employees saw the posted notice several days before the May 22 election. The notice posted at the Kia facility bore a sample reproduction of the ballot to be used in the election and read in pertinent part as follows:

Those eligible to vote are [employees in the Unit] who were employed during the last payroll period ending immediately prior to approval of the Stipulated Election Agreement by the Acting Regional Director (May 2, 2008).

DATE/TIME: Thursday, May 22, 2008 PLACE: 10:00 a.m. to 10:45 a.m.

Employer's Premises located at [the Honda facility]

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DATE/TIME: Thursday, May 22, 2008 PLACE: 11:15 a.m. to 11:45 a.m.

Employer's Premises located at [the Kia facility]

<sup>4</sup> The two facilities are six to seven blocks apart.

The two facilities are six to severi blocks apart

On May 22, four service and lube technicians were employed at the Kia location and eligible to vote: Mr. Monroe, Jason Ryder (Mr. Ryder), Marcus Yeung (Mr. Yeung), and Daniel Coats (Mr. Coats).<sup>5</sup> At about 8:30 a.m, Mr. Monroe asked each of the other three Kia technicians if they knew the decertification vote would be held that day, and each said he intended to vote.

On the same day, May 22, Board Agent, Daniel Apoloni (Mr. Apoloni) held a preelection conference at the Honda facility beginning at about 9 a.m. Those present included Jennifer Mora (Ms. Mora), attorney representing the Employer, Melody Coffman representing the Union, Mr. Ryder, Peter Flink (Mr. Flink), observer for the Union at both the Honda and the Kia facilities, and Mr. Monroe, observer for the Employer at the Kia facility. During the course of the preelection conference, Ms. Mora shared with the employer observers and Mr. Monroe a Board-generated, observer instruction sheet: Instructions to Observers, Form NLRB-722. Mr. Apoloni's oral instructions to the observers included the following:

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- When a voter arrives, check the name off the eligibility list.
- Check that no one gets a second ballot.
- The voter will go in the voting booth and vote.
- Do not engage in campaigning or electioneering.

• If a voter's name is not on the eligibility list, let the Board Agent know.

 It is the observers' responsibility to challenge ballots on behalf of the party they are representing.<sup>9</sup>

At about 9:20 a.m., Mr. Apoloni and some of the preelection participants drove to the Kia facility and continued the preelection conference there (the Kia conference), spending approximately 15 minutes. During the Kia conference, a small office (the Back Office) in the Northwest corner of the facility was designated as the polling area. Three doors opened into the Back Office: one from a wash area outside of the facility, one from the lobby area (the Lobby Door), and one (the Hallway Door) from a short hallway (the Hallway) linking the Back Office to a breakroom/restroom on one side of the Hallway and to a doorway into the auto service/repair

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<sup>&</sup>lt;sup>5</sup> Apparently another technician named "Mark" was also employed at the KIA facility but was ineligible to vote.

<sup>&</sup>lt;sup>6</sup> Mr. Ryder attended the preelection conference as the Employer's prospective KIA facility observer, which duty he did not, however, assume.

<sup>&</sup>lt;sup>7</sup> The Employer's observer at the Honda facility was not identified.

<sup>&</sup>lt;sup>8</sup> Evidence as to these instructions comes primarily from the testimony of Ms. Mora. It is clear she did not detail all the instructions given, as Mr. Monroe, Mr. Flink, and Mr. Ryder mentioned instructions she omitted. Mr. Ryder, for example, testified that during the preelection conference he "was informed how to instruct [Kia employees] to enter and exit [the polls] and what time."

<sup>&</sup>lt;sup>9</sup> Ms. Mora testified that she asked the Board Agent, "Are you going to tell [the observers] what to do if somebody shows up to vote and they're somebody different than who they really are?" While the question is too unclear for me to formulate a proposed instruction from it, the Board Agent apparently understood it and told the observers that if such occurred, they were to let him know. This suggests the Board agent gave an additional, mutually acceptable instruction to the observers.

<sup>&</sup>lt;sup>10</sup> Ms. Mora, Tom Hunt, the Employer's general manager, Benjamin Tate, the Employer's service manager, Mr. Ryder, and Mr. Monroe were among this group.

work area on the other side, in which the Kia technicians worked. The Kia auto service/repair work site was an open area of about 60 by 84 feet containing nine car lifts and one alignment rack.

At the Kia conference, the parties agreed the Lobby Door would remain closed and locked during the polling period. The door from the auto service/repair work area into the Hallway would, as usual, remain open, and Kia facility voters would pass from the work area into the Hallway and enter the Back Office through the Hallway Door. The group did not discuss how Kia facility voters would be released to vote. 11

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Following the preelection conference, Mr. Ryder returned to work at the Kia facility as did Mr. Monroe. Mr. Monroe again spoke to the three Kia technicians about the election, telling them it would be held in the Back Office.

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Mr. Apoloni returned to the Honda facility, where the polls opened as scheduled. After the Honda facility polls closed at 10:45 a.m., Mr. Apoloni went to the Kia facility. Mr. Monroe was present as the employer/petitioner observer, and Mr. Apoloni asked Mr. Monroe to post two official Board "Voting Place" signs at the Kia facility. 12 Using his discretion, Mr. Monroe posted one sign in the work area at the door into the Hallway, the typical route from the work area into the restroom/break area. Mr. Monroe posted the second sign at the Hallway Door. 13 Shortly before the Kia facility polls opened, Mr. Flink arrived to serve as the union observer. Mr. Flink and Mr. Monroe were the only observers. Mr. Apoloni told them they were to let him know if they wanted to challenge any voter.

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About 20 minutes before the polls opened at the Kia facility (i.e. at about 10:55 a.m.), Mr. Monroe told Mr. Ryder the voting would commence in about 20 minutes and that he should tell the Kia technicians how to enter the Back Office. According to Mr. Ryder, he personally told Mr. Yeung and Mr. Coats that in order to vote they were to go from the work area into the Hallway and, turning left, through the Hallway door into the Back Office. He told the two technicians that after voting, each was to exit the door from the Back Office to the outside, reenter the work area, and inform the next technician he could vote. 14

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<sup>&</sup>lt;sup>11</sup> There is no evidence the Kia voters needed to be "released" from work. It is reasonable to infer from Mr. Monroe's uncontroverted testimony that break time for the Kia technicians was flexible: "As far as your lunch break goes, it really varies. A flat rate, which is what most of the techs are out there, you don't really have a designated time to go to lunch. It's more or less when you're freed up from a job."

<sup>12</sup> The signs measuring 20 by 16 inches bore the heading "NATIONAL LABOR RELATIONS BOARD" and were inscribed "VOTING PLACE" in large blue letters with a space in which a 45 directional arrow could be drawn.

<sup>&</sup>lt;sup>13</sup> Mr. Monroe left the directional arrow space blank on both signs. Mr. Apoloni did oversee Mr. Monroe's placement of these signs.

<sup>&</sup>lt;sup>14</sup> As noted, I did not find Mr. Ryder to be a credible witness. In the absence of corroboration from Mr. Yeung and/or Mr. Coats, I do not accept Mr. Ryder's testimony of what he told the two Kia technicians.

The Kia facility polls opened at 11:15 and closed at 11:45. During the entire polling period, the Hallway Door remained open. Sometime during the first five minutes of polling, Mr. Monroe heard a sound from the Lobby Door as if someone were trying to open it; no one in the polling area responded. None of the Kia facility voters came to the polling area. As time passed, Mr. Monroe expressed frustration that none of the Kia technicians were voting. He told Mr. Apoloni that he had told the technicians that morning that the election would be held in the Back Office. In response to Mr. Apoloni's inquiry, Mr. Monroe also told Mr. Apolini the Kia facility had no public address system. Mr. Apoloni discussed with Mr. Monroe and Mr. Flink whether the three of them should go into the work area to see if the Kia unit employees wanted to vote. Concerned that such an action might be seen as coercive, Mr. Apoloni decided against it. Toward the end of the polling period, a parts-department employee knocked on the Lobby door. After Mr. Monroe opened the door and retrieved a document from a file cabinet for him, the door was relocked.

Immediately after the polls closed at the Kia facility, Mr. Monroe spoke to each of the other three Kia technicians individually, asking them why they had not voted. Mr. Ryder told Mr. Monroe he had been confused; he said that within five minutes of the opening of the polls, he had tried to enter the polling area from the locked Lobby Door but that Chuck [Levick], a service advisor working at the front counter, had "redirected [him] away from the door," telling him a meeting was going on in the Back Office and he was not supposed to be there. Mr. Yeung told Mr. Monroe he had intended to vote, but he wasn't aware of where or exactly when the voting was going to be. Mr. Coats similarly told Mr. Monroe he had wanted to vote, but he didn't know where the vote was going to be.<sup>17</sup>

At the hearing, Mr. Ryder gave an explanation of his failure to vote that differed from the one he offered Mr. Monroe. According to Mr. Ryder, he read the Board Notice of Election posted at the Kia facility a few days prior to the election. On the day of the election, he attempted to vote by going down the Hallway to the Hallway Door, which he found closed. Being unsure if he was supposed to enter the Back Office, Mr. Ryder neither knocked nor attempted to pull open the door but went into the lobby area and asked Chuck Levik where Mr. Monroe was. Mr. Ryder testified that Chuck Levik told him Mr. Monroe was in a meeting but said nothing further.<sup>18</sup> Mr. Ryder said nothing about trying the Lobby Door; he said he returned

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<sup>&</sup>lt;sup>15</sup> This finding is based on the testimonies of Mr. Monroe and Mr. Flink, both of whom gave clear, consistent, and candid testimony. Moreover, Mr. Monroe, as the RD petitioner, testified against decertification interests, which further strengthens his credibility. Testimony to the contrary is not credited for reasons set forth below.

<sup>&</sup>lt;sup>16</sup> The Employer characterizes this interchange as "the Board Agent allow[ing] the Union's observer to veto his recommendation to inform the technicians that they could vote."

Mr. Monroe's testimony of the discussion does not support such a characterization:

Mr. Monroe: ...the Board Agent had suggested maybe all three of us...[should] go out and maybe see if we can talk to...the other employees to see if they wanted to come in and vote. At that point, it was decided that that probably wasn't a good idea. It might be coercion of maybe trying to get the—

Q: And who made that decision?

Mr. Monroe: The Board Agent had made that decision, but I think Pete [Flink] had also made a comment about that saying that it wasn't something that we should do...I said I liked the idea

<sup>&</sup>lt;sup>17</sup> I credit Mr. Monroe's account of what the three other Kia technicians told him.

<sup>&</sup>lt;sup>18</sup> The Employer did not call Chuck Levick to testify or explain its failure to do so.

to the work area and told Mr. Yeung and Mr. Coats there was a meeting going on. Assuming someone would inform them when it was time to vote, Mr. Ryder made no further effort to find the polling area.<sup>19</sup>

Mr. Yeung was employed by the Employer at the Kia facility at the time of the two prior union elections and the present union election. Before May 22, he saw the Board's Notice of Election posted at the Kia facility, but he did not read it. On May 22 before the polls opened, Mr. Yeung asked Mr. Ryder where the election was going to be. Mr. Ryder told him the election would be held at the Kia facility. According to Mr. Yeung, Mr. Monroe also "might have" talked to him that morning about the time or location of the voting. Mr. Yeung made no attempt to vote in the election, agreeing that he waited for someone to "tap [him] on the shoulder or take [him] by the hand and say it's time to vote."

Mr. Coats had been employed at the Kia facility for only a few months at the time of the election. A few days before May 22, he saw the Board's Notice of Election posted at the Kia facility. He read the information about the time and date of the election and knew the election was to be held from 11:15 a.m. to 11:45 a.m. on May 22. Mr. Coats saw a Voting Place placard posted at the Kia facility about an hour before the election.<sup>20</sup> He also knew the election was to be held in the Back Office. Mr. Coats did not vote in the election because he "thought that they were still in a meeting since...everybody disappeared into the back of the building, and I didn't hear from them...I believe we just assumed that they would probably call on us or talk to us."

When the polls closed at the Kia facility, Mr. Monroe asked Mr. Ryder, Mr. Yeung, and Mr. Coats, individually, why they had not voted. Mr. Ryder said he had tried to open the door into the Back Office from the front office but found it locked, and he was then redirected away from the door. Mr. Yeung said he wasn't aware of where the voting was going to be at that particular time. Mr. Coats said he didn't know where the voting was to be held.

After the voting at both sites was conducted, the Board Agent and parties' representatives reassembled at the Honda facility. Mr. Apoloni told the group he had mistakenly permitted someone whose name was not on the eligibility list to cast a ballot instead of following the

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<sup>&</sup>lt;sup>19</sup> I cannot credit Mr. Ryder's account that he attempted to vote. Not only did I find credible Mr. Monroe and Mr. Flink's testimony that the Hallway Door was open during the entire polling period, Mr. Ryder's testimony was internally inconsistent. He first testified that when he attempted to vote, he grasped the handle of the Hallway Door and shook it gently. But under cross examination, he did not testify that he even touched the Hallway Door handle, saying, "I reached for the [Hallway Door] handle and that was about as far as I made it, and then I backtracked out." Further, Mr. Ryder's post-election statements to Mr. Monroe were inconsistent with his testimony. He told Mr. Monroe he had tried to enter the Back Office through the Lobby Door but said nothing about trying to enter through the Hallway Door and finding it closed. I also do not credit Mr. Ryder's testimony that he told Mr. Yeung and Mr. Coats a meeting was going on. Neither Mr. Yeung nor Mr. Coats corroborated that testimony or based their failure to vote on any statement of Mr. Ryder.

<sup>&</sup>lt;sup>20</sup> Mr. Coats erroneously believed the Voting Place placard also included the polling time: 11:15 to 11:45. Although his source is wrong, it is reasonable to infer that he knew the polling time.

challenged ballot procedure.<sup>21</sup> Ms. Mora asked that the ballot box be impounded pending investigation. Saying he wanted to call someone, Mr. Apoloni left the room. When he returned, he announced he would count the ballots, as the erroneously cast ballot might not affect the results of the election. Over Ms. Mora's objection, Mr. Apoloni counted the ballots. The final Tally of Ballots served on the parties showed that of 23 valid votes cast, 13 votes were for the Union and 10 were against. One challenged ballot remained undetermined.

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On May 29, the Employer filed timely objections to conduct affecting the results of the election. On June 24, the Regional Director of Region 19 issued a Report and Recommendations on Objections and Notice of Hearing, setting Objections 1, 2, 3, and 5 for hearing.<sup>22</sup>

### A. Objection 1

The NLRB, through its Board Agent, failed to provide the minimum laboratory conditions necessary for a free and fair election by failing to ensure access to one of the polling areas during the course of the election. This created a general atmosphere of confusion during the polling period, which interfered with the employees' ability to exercise a free, unfettered, and uncoerced choice in the election and interfered with the conduct of the election. This prevented three technicians (representing 75% of technicians in the Kia shop), all of whom attempted to vote during the open voting hours, from voting.

Section 11330.4 of the Board's Casehandling Manual (Representation Proceedings) instructs that the method of releasing employees to vote in a Board election should be resolved before the election but imposes no particular voter-release method. The Casehandling Manual approves employee self-release in accordance with the posted notice of election. The evidence herein is that the parties to this election did not discuss any method whereby the Kia facility voters would be released to vote, and it appears that the voters were left to themselves to appear at the designated polling area at the time specified in the posted notice (self-release). If such were the extent of the evidence, there would be little to cavil about: only four unit employees at the Kia facility were eligible voters and one of them was the Petitioner/observer; all four employees worked together in a relatively small area and knew of and had at least seen the posted election notice; one voting place placard was visibly posted in the work area at a commonly used doorway, and shortly before the Kia facility polls opened, the Petitioner notified the three other Kia facility unit employees where the polls were located and when the polls would open. It was not unreasonable to expect the three employees to release themselves from work during the polling period, just as they did for breaks, and vote if they wished to do so. Although there is no evidence the Board agent established a specific voter-release plan for the Kia facility, 23 there is also no evidence his failure to do so raised any reasonable doubt as to the fairness and validity of the Kia facility portion of the election.

<sup>&</sup>lt;sup>21</sup> Sec. 11338 of the Board's Casehandling Manual (Representation Proceedings) provides that the Board agent must challenge anyone whose name is not on the eligibility list, and that a challenged voter should place the marked ballot in a challenge envelope, seal the envelope, and drop it in the voting box.

<sup>&</sup>lt;sup>22</sup> On June 23, the Employer withdrew its two remaining objections, which withdrawal the Regional Director approved on June 24.

<sup>&</sup>lt;sup>23</sup> Mr. Ryder's testimony that during the preelection conference he was assigned to instruct Kia employees on the time of the election and how to enter and exit the polls suggests that at least some discussion occurred about how voters would be released.

The evidence is clear that all the Kia technicians knew the Kia facility election location and time. Within the first five minutes of the opening of the polls, Mr. Ryder left the work area purportedly to vote. As detailed above, his account of his abortive attempt to vote is not credible, and the only reasonable inference to be drawn is that, for whatever reason, Mr. Ryder did not choose to cast a ballot in the election. The same inference must be drawn as to Mr. Yeung and Mr. Coats. Information about the election place and time was visibly posted in the Kia work area and personally conveyed to both Mr. Yeung and Mr. Coats on the morning of the election. But neither technician made the least effort to vote. Further, when questioned by Mr. Monroe immediately after the election as to why they did not vote, neither expressed chagrin over their missed opportunities, but merely offered weak excuses. The only reasonable inference to be drawn is that, like Mr. Ryder, both chose not to participate in the election. While Section 7 of the Act guarantees employees the right to engage in union activities, it also protects their right to refrain from such activities.<sup>24</sup> Since the evidence supports the conclusion that Mr. Ryder, Mr. Yeung, and Mr. Coats voluntarily opted to refrain from voting in the election, I recommend that Objection 2 be overruled.

## Objection 2

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The NLRB, through its Board Agent, interfered with the fair operation of the election process and destroyed laboratory conditions by failing to follow Board procedures in regard to the conduct of elections by (1) failing to automatically challenge a ballot of an individual who was not listed on the Employer's Excelsior list, (2) failing to exclude the ballot and place it in the appropriate envelope set aside for challenged, and (3) placing the ballot in the ballot box whereby it was commingled with the remaining ballots. Such conduct occurred despite the fact that the Board Agent specifically informed the Employer that individuals who were not listed on the Excelsior list would be subject to automatic challenge and actually challenged other individuals who were not on the Excelsior list.

During the polling at the Honda facility, the Board agent made a mistake resulting in the inclusion among otherwise valid ballots of the ballot of a voter who may or may not have been eligible. The Employer argues that the mistake interfered with the fairness of the election and destroyed the requisite laboratory conditions. As the objecting party, the Employer carries the burden "to prove that there has been misconduct that warrants setting aside the election. If the evidence is insufficient, then the Employer has failed to meet its burden." *Consumers Energy Co.*, 337 NLRB 752 (2002). The Employer provided evidence that during the voting at the Honda facility the Board Agent erroneously permitted a voter whose name was not on the eligibility list to cast a ballot instead of following the Board's challenged ballot procedure. In order to set aside an election on the basis of a Board agent's conduct, the facts must raise a reasonable doubt as to the fairness and validity of the election. Mere failure to follow guidelines will not warrant setting aside an election absent such a doubt. *Consumers Energy Co.*, supra; *Rheems Mfg. Co.*, 309 NLRB 459 (1992).<sup>25</sup>

The Employer has provided no evidence that the Board agent's mistake destroyed the appearance of the Board's impartiality or neutrality. Indeed, there is no evidence any voter, including the observers, even noticed the mistake, which the Employer learned about from the

<sup>&</sup>lt;sup>24</sup> In light of this Section 7 protection, the Board agent's decision not to leave the Kia polling area with the observers to see if the Kia technicians wanted to vote was not unreasonable.

<sup>&</sup>lt;sup>25</sup> See *Queen Kapiolani Hotel*, 316 NLRB 655 FN5 (1995) (the provisions of the Casehandling Manual are not binding procedural rules).

Board agent at the vote count. While the Board agent's mistake constitutes a procedural irregularity, which under certain circumstances, could be critical to the outcome of the election, it does not demonstrate such laxness and inattention to election protocol as to require the election to be set aside. Therefore the question of the effect of counting the erroneously included ballot depends on whether the ballot was critical to the outcome of the election. See *Correctional Health Solutions*, 303 NLRB 835 FN2 (1991).

The final tally of ballots in this election showed 13 votes were cast for the Union and 10 votes were cast against the Union with one undetermined challenge. The erroneously cast ballot and the one remaining undetermined challenged ballot, neither singly nor in combination, are sufficient to affect the results of the election. See *Ryder Memorial Hospital*, 351 NLRB No. 26 (2007). Accordingly, I recommend that Objection 2 be overruled.

#### Objection 3

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The NLRB, through its Board Agent, interfered with the fair operation of the election process and destroyed laboratory conditions by failing to properly instruct observers on appropriate procedures to maintain in the polling area, even after a specific request by counsel for the Employer.

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The basis of this objection is the Employer's complaint that the Board agent failed to give full instructions to the election observers at the preelection conference. While it does not appear from the record that the Board agent exhaustively instructed the observers, the Board agent told the observers to check names off the eligibility list, to inform the Board agent of voters whose names were not included on the eligibility list, and to monitor the distribution of ballots and use of the voter booth. While the Board is deeply concerned about the fairness and validity of the elections it conducts, there is no "per se rule that ... elections must be set aside following any procedural irregularity," 26 and the Board requires more than mere speculative harm to overturn an election." J.C. Brock Corp., 318 NLRB 403 (1995).

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The Employer presented no evidence that the alleged instructional deficiencies resulted in election blunders or raised a reasonable doubt as to the fairness and validity of the election. Accordingly, I recommend that Objection 3 be overruled.

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#### Objection 5

The conduct set forth in Paragraphs 1 through [3] above calls into question the NLRB's integrity, impartiality, and neutrality in the eyes of the voters and the parties to the election.

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This objection asserts an additional theory of election irregularity beyond the specific conduct alleged in objections 1 through 3. The Board is careful to ensure that the manner in which an election was conducted raises no reasonable doubt as to the fairness and validity of the election. The election circumstances detailed above cannot be reasonably interpreted as impugning the Board's election standards or destroying confidence in the Board's election processes. Accordingly, I find no basis for setting aside the election based upon the theory advanced in this objection, and I recommend the Employer's objection 5 be overruled.

<sup>&</sup>lt;sup>26</sup> St. Vincent Hospital, LLC, 344 NLRB 586, 587 (2005) (quoting Rochester Joint Board v. NLRB, 896 F.2d 24, 27 (2d Cir. 1990).

#### CONCLUSION

Based on the above, I recommend the Employer's objections, in their entirety, be overruled and the results of the election certified.<sup>27</sup>

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Dated, at Washington, D.C. August 19, 2008

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Lana H. Parke Administrative Law Judge

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<sup>45</sup> Under the provisions of Section 102.69 of the Board's Rules and Regulations, Exceptions to this Report may be filed with the Board in Washington, DC within 14 days from the date of issuance of this Recommended Decision. Exceptions must be received by the Board in Washington by September 2, 2008. Immediately upon the filing of such exceptions, the party filing same shall serve a copy thereof upon the other parties and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board may adopt this Recommended Decision.